

EXHIBIT J

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Martin Marietta Ready Mix
PO Box 8040
Fort Wayne, IN 46898-8040



9590 9402 4167 8092 3330 20

2. Article Number (Transfer from service label)

7016 3010 0000 7099 9622

PS Form 3811, July 2015 PSN 7530-02-000-9063

Domestic Return Receipt

Case 4:20-cv-00353-Document 1-10 Filed 04/27/20 Page 1 of 16 PageID #: 54

X ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

CERTIFIED MAIL



CITY OF MCKINNEY
Administration
P.O. Box 517 • McKinney, TX 75069



7016 3010 0000 7099 9622

7016 3010 0000 7099 9622

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Enter delivery information with our website at www.usps.com

Certified Mail Fee

Enter delivery information with our website at www.usps.com

☐ Return Receipt (hardcopy) \$ _____

☐ Return Receipt (hardcopy) \$ _____

☐ Certified Mail Restricted Delivery \$ _____

☐ Adult Signature Restricted Delivery \$ _____

☐ Adult Signature Restricted Delivery \$ _____

Postage and Fees

Postage \$ _____

Insurance \$ _____

Other \$ _____

Postmark

Here

Delivery Address

Street 1
City, St
PO Box 8040
Fort Wayne, IN 46898-8040





Unique by nature.

Certified No. 7016 3010 0000 7099 9622

July 20, 2018

Martin Marietta Ready Mix
PO Box 8040
Fort Wayne, IN 46898-8040

RE: Enhanced Enforcement of Noise Regulations

To Whom It May Concern:

The purpose of this letter is to notify you of the City of McKinney's intent to begin enhanced enforcement of Section 70-120(b)(7) of the Code of Ordinances beginning August 1, 2018.

It has come to our attention that your business operations may currently be in violation of this section of McKinney's Code of Ordinances. Section 70-120 of the Code of Ordinances governs noise disturbances that are prohibited in specific areas of the City. Provision (b)(7) states:

(7) Power equipment.

- a. Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 7:00 a.m.*
- b. Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a nonresidential district in such a manner as to cause a noise disturbance in violation of section 146-134.*

The entirety of Article V of Chapter 70 of the Code of Ordinances is attached for your reference. You are hereby advised to take immediate corrective actions prior to the initiation of enhanced enforcement efforts so as to ensure your compliance with the ordinance and avoid your receiving notices of violation and/or citations.

CITY OF McKinNEY

P.O. Box 517 • McKinney, Texas 75070 • Metro 972-562-6080

Any person found violating any of these regulations shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$500.00 dollars. A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs or continues to occur.

Thank you for your timely attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Quint', with a stylized flourish at the end.

Michael Quint
Executive Director of Development Services

City of McKinney, TX | Development Services Division
221 N. Tennessee St. | McKinney, TX 75069
Telephone: 972-547-7402
mquint@mckinneytexas.org | www.mckinneytexas.org

CC: Paul Grimes, City Manager

[Enclosures]

ARTICLE V. - NOISE

Sec. 70-118. - Purpose.

The purpose of this article is to make it unlawful for any person or entity to make, cause to be made or allow any loud or unreasonably loud and disturbing noise of such character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the inhabitants of the city, and/or which renders the enjoyment of life, health or property uncomfortable or interferes with public peace and comfort.

(Code 1982, § 20-91; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000)

Sec. 70-119. - Definitions.

- (a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of McKinney, employees or any authorized representative of the city.

Construction means any site preparation, assembly, erection, substantial repair, alteration, or similar action (excluding demolition) of public or private right-of-way surfaces, structures, utilities or similar property.

Demolition means any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.

Device means any mechanism which is intended to produce, or which actually produces, noise when operated or handled.

Emergency vehicle means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

Garbage means all animal and vegetable matter, food containers, ashes, paper, small hedges and lawn trimmings, rubbish, trash, waste material, refuse including solid, liquid, semisolid, or containing gaseous material, resulting from residential, municipal, commercial, community and institutional activities.

Motor vehicle means any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semi-trailer, camper, motorcycle, minibike, go-cart, dune buggy or racing vehicle.

Noise disturbance means any sound which annoys or disturbs, or which causes or tends to cause an adverse psychological or physiological effect upon, the sensibilities of a reasonable, prudent, adult person; and unreasonably loud or disturbing noise which renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

Noise disturbance per se means not requiring extraneous evidence or support to establish the existence of a noise disturbance.

Nonresidential district means any district not classified by the zoning ordinance as containing residential homes, apartments or condominiums.

Owner means any person having supervision or control of any property.

Power equipment means any motorized electric or fuel powered equipment, including, but not limited to, tractors, lawnmowers, and other similar device or equipment.

Power model vehicle means any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

Property means any lot, tract, parcel of land or a portion thereof, occupied or unoccupied, improved or unimproved, public or private within the corporate limits of the city.

Property boundary means an imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.

Quiet zone means any territory adjacent to or within a distance of 500 feet from the nearest property line of (1) any residential district or (2) any real property on which a school, college, hospital, clinic, library or other noise-sensitive facility is situated.

Residential district means any district classified by the zoning ordinance as containing residential homes, apartments or condominiums.

Roadway means any street, alley, parkway, sidewalk or gutter.

Rubbish means any refuse, garbage, litter or worthless material.

(b)

All terminology used in this article and not specifically defined above shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

(Code 1982, § 20-92; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000; Ord. No. 2017-02-024, § 2, 2-21-2017)

Sec. 70-120. - Specific noise disturbance prohibited.

- (a) No person shall allow, make or cause to be made any unreasonably loud or disturbing noise that is offensive to the sensibilities of a reasonable, prudent adult person, renders the enjoyment of life or property uncomfortable, interferes with public peace and comfort, or causes a noise disturbance as defined.
- (b) The following includes, but is not limited to, activities which can create unreasonably loud or disturbing noises in violation of this article, including activities which are noise disturbances per se, unless an exemption exists or a permit of variance was first obtained as provided in section 70-122, or the noise emitted is consistent with or within the parameters of section 146-134.
 - (1) *Animals.* Owning, keeping, possessing, or harboring any animal or fowl which by frequent or habitual noise making, unreasonably disturbs or interferes with the peace, comfort or repose of citizens, or causes a noise disturbance as defined herein. The provision of this article shall apply to all private or public facilities including any animal shelter or commercial kennel, which holds or treats animals.
 - (2) *Radios, television sets, musical instruments, loudspeaking amplifiers and similar devices.*
 - a. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a quiet zone in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday, and between the hours of 11:30 p.m. and 7:00 a.m., Friday and Saturday.
 - b.

The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeaker and sound amplifiers or other machine or device for the producing or reproducing of sound within a nonresidential area in such a manner as to cause a noise disturbance.

- c. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device that produces or reproduces sound for the purpose of attracting attention to any cause or demonstration, or to any performance, show, sale or display of merchandise so as to attract attention to such cause, demonstration or premises when such use is done in a manner which causes a noise disturbance.
- d. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device on trucks or other moving vehicles for the purpose of attracting attention to any cause or demonstration, or for advertising any show, sale or display of merchandise when such use is done in a manner which causes a noise disturbance.
- e. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound outdoors in a portion of Historic Downtown McKinney being the area depicted on illustration one below between the hours of 10:00 p.m. and 7:00 a.m.. Any such activity shall not create a disturbance if acoustic, non-amplified musical instruments are used between the hours of 10:00 p.m. and 11:30 p.m.
- f. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound outdoors in the area shown in Illustration One if the source of the sound is located indoors.

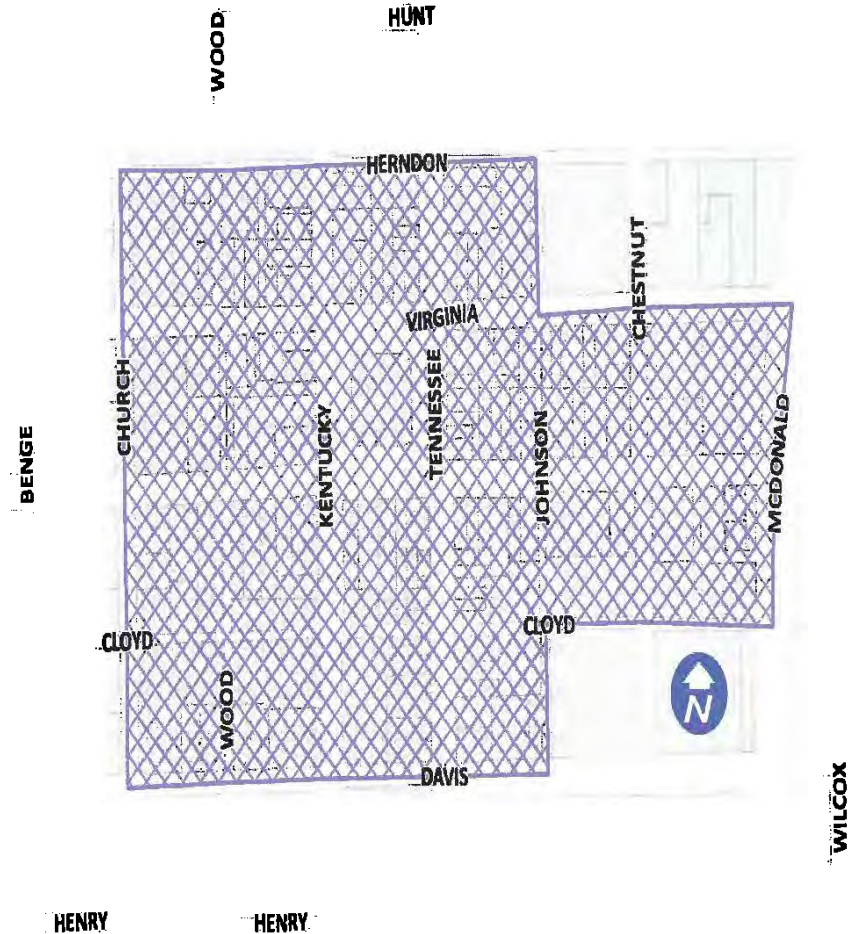


Illustration One

- (3) *Vehicular sound amplification systems.* Operating or controlling a motor vehicle in either a public or private place within the city and operating any sound device which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle in such a manner that, when operated, it is audible at a distance of 30 feet, or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of 30 feet from the source when such operation is done in a manner which causes a noise disturbance.
- (4) *Yelling, shouting, etc.* The yelling, shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person in such a manner to cause a noise disturbance.
- (5)

Loading operations. The loading or unloading of any vehicle in such a manner as to cause a noise disturbance. To the extent applicable, the provisions and standards of section 146-134 shall apply.

(6) *Construction/maintenance work.*

- a. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a quiet zone, in such a manner as to cause a noise disturbance, except as provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- b. Operating or permitting to be operated any gravel pit, rock crusher, or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a quiet zone, in such a manner as to cause a noise disturbance, except as provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- c. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf course or appurtenances thereto within a nonresidential district in such a manner as to cause a noise disturbance, except as otherwise provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134.
- d. Operating or permitting to be operated any gravel pit, rock crusher or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a nonresidential district in such a manner as to cause a noise disturbance, except as otherwise provided in subparagraphs e. or f. of this section 70-120(b)(6) or section 146-134.
- e.

The director of engineering, or his designee, may grant an exception to this section 70-120(b)(6) to allow for concrete placements between the hours of 9:00 p.m. and 6:00 a.m. if in the sole judgment of the director, or his designee, denial of the requested exception will cause an adverse impact to public safety, or if all of the following conditions apply:

1. The concrete placement will take longer than four hours; and,
2. The heat index for the requested day is forecast to be above 100 degrees by noon; and,
3. The concrete placement will take place in the public right of way or a public easement.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.

- f. The building official, or his designee, may grant an exception to this section 70-120(b)(6) to allow for concrete placements between the hours of 9:00 p.m. and 6:00 a.m. if in the sole judgment of the building official, or his designee, denial of the requested exception will cause an adverse impact to public safety, or if all of the following conditions apply:

1. The concrete placement will take longer than four hours; and
2. The heat index for the requested day is forecast to be above 100 degrees by noon; and
3. The concrete placement will take place on private property; and
4. The job site is not located within in a quiet zone.

A fee as determined from time to time by city council shall be charged to each applicant for processing an application for such an exception.

(7) Power equipment.

- a. Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 7:00 a.m.
- b.

Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a nonresidential district in such a manner as to cause a noise disturbance in violation of section 146-134.

(8) *Motor vehicles—Repairs or testing.*

- a. The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- b. The repairing, rebuilding, modifying or testing any motor vehicle (including off-road vehicles) or watercraft within a nonresidential district in such a manner as to cause a noise disturbance, in violation of section 146-134.

(9) *Same—Running loud or out of repair.*

- a. The use of any automobile, motorcycle, or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 7:00 a.m.
- b. The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a nonresidential district in such a manner as to cause a noise disturbance.

- (10) *Same—Exhaust.* The discharge into the open air of the exhaust of any motor vehicle in such a manner as to cause a noise disturbance, except as discharged through a muffler or other device which effectively and efficiently prevents loud and unusual noises and annoying smoke.

(11)

Explosive devices. Sound sources including, but not limited to, the use of fireworks, explosives, the firing of guns or other explosive devices in such a manner as to cause a noise disturbance; provided, however, no such noise disturbance shall be deemed to exist when the activity is conducted in strict accordance with said ordinance or authority.

(12) *Powered model mechanical devices.*

- a. The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise producing devices, within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 7:00 a.m.
- b. The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise producing devices within a nonresidential district in such a manner as to cause a noise disturbance.

(13) *Refuse-compacting vehicles.* Operating or permitting to be operated any refuse compacting, processing or collection vehicles in any residential district or quiet zone, or within 500 feet of any residence or quiet zone in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 10:00 p.m. and 6:00 a.m. No noise disturbance shall be deemed to occur when the noise is created in the regular course of the activity for which the equipment is designed and is designed and the noise occurs for no longer than reasonably necessary to conduct the activity and the hours of operation occur between 6:01 a.m. and 9:59 p.m.

(14) *Quiet zone.* Creating a noise disturbance on any street adjacent to any school, hospital, clinic, library or other noise sensitive facility.

(15) *Stationary nonemergency signaling devices.* Sounding or permitting the sounding of any electronically activated or amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place for more than five minutes during any consecutive 60-minute period which causes a noise disturbance. Such signaling

device is allowed if used as a danger signal, residential alarm, and/or as required by law if a vehicle is backing, starting or turning in such a way as to likely cause a collision.

- (c) In the event a conflict exists between the performance standards set forth in section 146-134 and this article, the performance standards shall control.

(Code 1982, § 20-93; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000; Ord. No. 2006-06-085, § 1, 6-20-2006; Ord. No. 2015-03-012, § 2, 3-17-2015; Ord. No. 2017-02-024, §§ 3, 4, 2-21-2017)

Sec. 70-121. - Exemptions.

The following sources of potential noise disturbance shall be exempt from the regulations of this article:

- (1) Safety signals, storm warning sirens or horns and the testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves;
- (2) Sound caused in the performance of emergency or public service work, including police, fire and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community;
- (3) Sounds caused by natural phenomena;
- (4) Activities conducted on public parks and playgrounds which are approved, sponsored or sanctioned by the city. Activities conducted on public or private school grounds including, but not limited to, school athletic and school entertainment events which are approved, sponsored or sanctioned by the school; and
- (5) Any activity, noise or sound exempted under section 146-134.

(Code 1982, § 20-94; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000; Ord. No. 2006-06-085, § 1, 6-20-2006)

Sec. 70-122. - Permits of variance.

- (a) The director of public safety, or his designated representative, is authorized to grant permits for relief of any provision in this article on the basis of undue hardship in cases where:
- (1) The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this article;

- (2) Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this article; or
 - (3) No reasonable alternative is available to the applicant.
- (b) A special events noise variance permit allowing specific deviations from this article may be issued by the director of public safety, or his designated representative, without a demonstration of undue hardship, for events of limited duration (not to exceed seven days) which, in the opinion of the director, promote identifiable historical, cultural, artistic, economic development, or community goals (including, but not limited to, the promotion of community activity in the commercial historic district), including conditions for the variance specific to the use; provided that any noise disturbance created by such activity will be abated when such request is made by the director, or his designated representative. The fee in subsection (e) of this section shall apply to any permit issued.
- (c) An automatic variance will be granted without the payment of permit fees for the purpose of conducting parades or other public events; provided that any noise disturbance created by such activity will be abated when such request is made by the director of public safety, or his designated representative.
- (d) The director of public safety, or his designated representative, may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects and may suspend any permit issued for violating any provisions prescribed in the permit of variance.
- (e) A fee as determined from time to time by city council shall be charged to each applicant for processing permit applications.

(Code 1982, § 20-95; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000; Ord. No. 2008-08-078, 8-19-2008)

Sec. 70-123. - Appeals.

- (a) Any applicant who has been denied a permit of variance or any permittee whose permit has been suspended, shall have the right to a hearing before the city manager.
- (b) Request for a hearing shall be made in writing and received by the director of public safety, or his designated representative, within ten days of the date of the denial or the date of the notice of the suspension. The city manager may review the appeal at a staff level and has the authority to reject the action of his designated representative and order that a permit be granted or to reinstate a suspended permit. However,

should the city manager uphold the denial or suspension of a permit, he shall, or his designated representative shall, schedule a hearing within 30 days of receipt of the request.

- (c) The city manager shall have the authority to review all pertinent files and information regarding the applicant/permittee which are in the custody of the director of public safety, or his designated representative. Additionally, the city manager shall have the authority to accept written and verbal testimony from the director of public safety, his designated representative, any appropriate city staff member, applicant/permittee and interested citizens. The city manager shall also have the authority to place time restrictions on the testimony to be given at the hearing.
- (d) The city manager shall have the authority to assess whether the director of public safety, or his designated representative, acted properly within the powers granted under this article in the denial or suspension of a permit. Upholding the action of the director of public safety, or his designated representative, shall affirm the denial or suspension. Rejection of the action of the director of public safety, or his designated representative, shall automatically grant a permit or reinstate a suspended permit.
- (e) No person whose permit has been denied or suspended, shall create or allow the creation of the noise disturbance in dispute prior to a determination by the city manager.

(Code 1982, § 20-96; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000)

Sec. 70-124. - Penalty.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$500.00 dollars. A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs or continues to occur. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

(Code 1982, § 20-97; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000)

Sec. 70-125. - Injunctive relief.

In addition to and accumulative of all other penalties, the city shall have the right to seek injunctive relief for any and all violations of this article.

(Code 1982, § 20-98; Ord. No. 2000-06-44, §§ 1, 2, 6-20-2000)

Secs. 70-126—70-148. Reserved.